

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHRISTIE A. NOWLIN,	:	CIVIL ACTION
Plaintiff/Appellant/	:	
Cross Appellee	:	
	:	
v.	:	
	:	
TAMMAC CORPORATION, et al.,	:	
Defendants/Appellees/	:	
Cross-Appellants	:	NO. 05-1528

MEMORANDUM AND ORDER

McLaughlin, J.

October 17, 2005

This bankruptcy appeal involves a mobile home owned by the debtor, Christie A. Nowlin. Tammac Corporation ("Tammac") is the assignee of the contract through which Ms. Nowlin purchased and financed the mobile home. The payments on the mobile home are largely outstanding, and Tammac's claim is secured solely by the mobile home.

Tammac appeals the bankruptcy court's determination that the mobile home is personalty, as opposed to realty, in the bankruptcy context. Nowlin appeals the bankruptcy court's valuation of the mobile home at \$38,000.00, and its determination that an 8% interest rate applies to Tammac's secured claim.

I. Procedural History

Ms. Nowlin filed for Chapter 13 bankruptcy in the

United States Bankruptcy Court for the Eastern District of Pennsylvania on February 14, 2003. On March 12, 2003, she filed an adversary complaint against Tammac and Frederick Reigle, trustee. A trial was held on September 13, 2004, before United States Bankruptcy Judge Thomas M. Twardowski. The bankruptcy court issued an order and memorandum opinion on February 25, 2005. It found that the mobile home was personalty so that Tammac's claim could be bifurcated, that the value of the mobile home was \$38,000.00 and Tammac's secured claim could be "crammed down" to that amount, and that 8% was the proper interest rate to be applied to the claim. On March 7, 2005, Ms. Nowlin appealed to this Court on the valuation and interest rate issues. On March 16, 2005, Tammac cross-appealed on the issue of whether the mobile home was personalty or realty. The Court held oral argument on the appeals on October 6, 2005.

II. Facts

The following facts were established at trial:

In October of 1999, Ms. Nowlin purchased a 2000 Redman mobile home. The mobile home was delivered to and is located at 516 Overview Drive, Hamburg, Pennsylvania, in the Pleasant View mobile home park. Ms. Nowlin purchased the mobile home through an installment sales agreement with Armstrong Mobile Homes ("Armstrong"). Armstrong later assigned its rights to Tammac.

(Tr. 29-30, 43, 61-62).

The mobile home cost approximately \$46,000.00. Ms. Nowlin agreed to make three hundred and sixty payments of \$447.16 to Armstrong over thirty years to finance it. The parties agreed to a 12.5% interest rate. (Tr. 43, 134).

The contract required Ms. Nowlin to obtain written agreement from Tammac before moving the mobile home from Pleasant View. It also stipulated that the mobile home would remain personalty until the contract was paid in full, and required Ms. Nowlin to obtain Tammac's written consent before allowing the mobile home to become part of realty or otherwise lose its treatment as personalty under applicable law. (Tr. 44, 83).

The living space in the mobile home is 44 x 28 feet. With the hitch, the mobile home is 48 x 28 feet. The agreement required Armstrong to install removable skirting and decks according to the mobile home park regulations. The mobile home is not attached to a permanent concrete pad or block foundation; rather, it sits on separate cinderblocks. It is also anchored to the ground and leveled. It is attached to utility, telephone and cable lines. Except for the gas lines, these attachments were already on the lot when Ms. Nowlin moved in. A removable shed also came with the mobile home. The parties stipulated that the wheels of the mobile home have been removed. Other features of the mobile home include a skylight, a thirty-gallon water heater,

and a window air conditioner, which Ms. Nowlin installed. (Tr. 33-37, 40, 43, 45-48, 127).

Ms. Nowlin does not own the lot upon which the mobile home sits; she pays monthly rent. Ms. Nowlin testified that she intended to stay in the mobile home park only until she could afford to purchase land, at which point she planned to move the mobile home to her own land. Because her finances had not been good, this plan never materialized. (Tr. 37-38).

The Tammac legal specialist and collection supervisor, Jeff Goodrich, testified that the mobile home is taxed as realty by the town and county. (Tr. 92).

Ms. Nowlin testified that in her estimation, the mobile home is worth about \$25,000.00. She testified that it is in average condition. She noted that the windows do not open correctly. She described a leak in one bathroom that required her to rip out the rug, and noted that she had not replaced the flooring there. She described a hole in the kitchen wall that was caused by a trash can. (Tr. 38, 40-41).

Both parties introduced experts on the issue of valuation of the mobile home. Ms. Nowlin's expert was appraiser and auctioneer Elmer Murry, who had fifty-one years of experience. He noted that mobile homes tend to depreciate, rather than appreciate, in value. He described the mobile home dimensions as 42 x 24 feet, which was later determined to be

incorrect. Based upon the incorrect dimensions, he valued the mobile home at \$25,000.00. His valuation was based upon experience and consulting with others, but he did not list any comparable properties in his report about the mobile home. He testified, however, that he did discuss comparable properties with others before making his report. (Tr. 8, 10, 13-14, 21, 23, 37, 43).

Tammac's expert on the issue of valuation was Keith Pfeiffer, a certified manufactured housing appraiser. Like Mr. Murry, Mr. Pfeiffer had several decades of mobile home appraisal experience. He estimated Ms. Nowlin's mobile home's value at \$49,500.00 or \$46,751.00, using two different appraisal approaches. To come up with these figures, Mr. Pfeiffer compared Ms. Nowlin's mobile home with other nearby mobile homes. The other mobile homes, however, were different models than Ms. Nowlin's. On cross, it was established that Mr. Pfeiffer may have double-counted or included within his appraisal items that Ms. Nowlin in fact purchased separately from the mobile home. Mr. Pfeiffer stated that a new 2005 version of Ms. Nowlin's model of mobile home would sell for approximately \$52,000.00 or \$53,000.00. (Tr. 94-98, 107-109, 117-120, 132).

Ms. Nowlin's last payment to Tammac for the mobile home was made on February 10, 2003. She has made no payments since the inception of her bankruptcy proceedings. Her principal

balance at the time of trial was \$41,368.28. (Ex. D-2, Tr. 71).

III. Jurisdiction and Standard of Review

The Court has appellate jurisdiction pursuant to 28 U.S.C. § 158(a) (2005). A district court reviews a bankruptcy court's findings of fact under a "clearly erroneous" standard. U.S.C.S. Bankr. R. 8013; IRS v. Pransky, 318 F.3d 536, 542 (3d Cir. 2003); Henthorn v. GMAC Mortgage Corp., 299 B.R. 351, 354 (E.D. Pa. 2003). It exercises de novo review over conclusions of law. Pransky, 318 F.3d at 542; Henthorn, 299 B.R. at 354.

IV. Analysis

The issues on appeal are (1) whether the bankruptcy court properly treated Ms. Nowlin's mobile home as personalty and bifurcated the secured claim of Tammac on it, (2) whether the bankruptcy court properly valued the mobile home at \$38,000.00, and (3) whether the bankruptcy court properly applied an 8% interest rate to Tammac's claim on the mobile home. The Court will affirm the bankruptcy court's decision on all three issues.

A. The Mobile Home: Realty or Personalty?

The parties agree that whether the mobile home is realty or personalty is a legal issue subject to de novo review. The Court agrees with the bankruptcy court's conclusion that the

relevant factors weigh in favor of treating the mobile home as personalty and bifurcating Tammac's claim.

Generally, the Bankruptcy Code allows a debtor to bifurcate a creditor's claim into secured and unsecured elements based upon the fair market value of the collateral. 11 U.S.C. § 506(a) (2005); McDonald v. Master Fin., Inc., 205 F.3d 606, 609 (3d Cir. 2000). An exception in the Bankruptcy Code prohibits such bifurcation where the only collateral is realty that is the debtor's principal residence. 11 U.S.C. § 1322(b)(2) (2005); Nobelman v. American Savings Bank, 508 U.S. 324, 327 (1993).

All parties agree that the mobile home is Ms. Nowlin's primary residence. Whether it is personalty or realty is governed by Pennsylvania law.

Chattels that are physically connected to realty but can be removed without damaging the chattel or the realty can be treated as either realty or personalty depending upon the intent of the parties at the time the chattel was physically connected to the realty. Clayton v. Lienhard, 167 A. 321, 322 (Pa. 1933).

The analysis of this issue is based upon several factors including (1) whether the mobile home is permanently attached to the land; (2) the method by which the mobile home is attached to the land; (3) the ease or difficulty of moving the mobile home from the land; (4) whether the mobile home can be removed from the land without damage to the land; (5) whether the

mobile home is necessary or essential to the realty; (6) how long the mobile home has been attached to the land; (7) whether the mobile home and the lot upon which it sits have the same owner; and (8) the conduct of the owner and whether it shows an intent to permanently attach the mobile home to realty. See Lantz Appeal, 184 A.2d 127, 129 (Pa. Super. 1962); Streyle v. Bd. of Prop. Assessment, 98 A.2d 410, 411-12 (Pa. Super. 1953); Central Counties Bank v. Moyer, 4 Pa. D. & C.3d 304, 305-06 (C.P. Centre Cty. 1977); Fromm v. Frankhouser, 7 Pa. D. & C.3d 560, 564 (C.P. Lancaster Cty. 1977); Hartman v. Fulton County, 24 Pa. D. & C.2d 611, 615-16 (C.P. Fulton Cty. 1960); Coyle Assessment, 17 Pa. D. & C.2d 149, 152 (C.P. Northampton Cty. 1958).

The intent of the parties is determined not by their self-serving statements but based upon all the objective facts and circumstances. Coyle Assessment, 17 Pa. D. & C.2d at 152. The fact that a mobile home is "suitable for living quarters" does not mean that it is realty. Lantz Appeal, 184 A.2d at 129.

Although there is little specific guidance from the Pennsylvania Supreme Court, the lower Pennsylvania courts have dealt with the issue of categorizing mobile homes as realty and personalty. Mobile homes have been treated as realty and personalty in various circumstances. See, e.g., Fromm, 7 Pa. D. & C.3d at 566, (holding that a mobile home was realty for purposes of a statute of limitations question where it had

remained in the same position for almost seventeen years, its owners owned the land upon which it was situated, there were water, sewer, electricity and telephone attachments, and the mobile home was assessed as realty for tax purposes); Coyle Assessment, 17 Pa. D. & C.2d at 150-53 (holding that three house trailers situated on land owned by the trailer owners were realty for assessment purposes where one trailer was attached to a metal canopy and a three-wall addition, the trailers were connected to cesspools, water, and electricity, and abutted concrete floors or patios, and the occupants had been on the premises for two years, though they claimed to have plans to leave at some indefinite point in the future); Streyle, 98 A.2d at 411-12 (concluding that mobile homes were personalty where they were equipped with wheels and stabilized with blocks or jacks but not foundations, they had access to water, electric and cesspool facilities, the average stay of residents on the land was six months or shorter, and it would only take a few minutes to ready the trailers for travel); Hartman, 24 Pa. D. & C.2d at 615-16 (holding in another assessment case that a trailer was not taxable as realty where the owner and resident was not the landowner and the trailer was not permanently attached to the land but was set upon loose concrete blocks and easily removable within fifteen minutes if jacked up, connected with its wheel assembly, and disconnected from its water and sewer connections).

In Moyer, 4 Pa. D. & C.3d at 305-06, a collection case like the instant action, the court found that a trailer remained personalty. It was sold fully capable of locomotion and moved to a mobile home park. The occupier did not own the land. The wheels were removed. Water, sewage, gas, electric, and cable television lines were connected, and a partial skirting was affixed. The mobile home was placed on a pad, but not a concrete wall foundation. The court found that it would be inappropriate to consider a mobile home realty simply because it was taxed as realty. It reasoned that unfairness would result if a person could purchase a mobile home and then "place it on a piece of land which he did not own and, thereby convert the same to real estate to the prejudice of a chattel security interest." Id.

Applying the relevant factors, the Court finds that the mobile home is personalty in the bankruptcy context. First, the mobile home is not permanently attached to realty, and could be removed relatively easily. It is connected to impermanent attachments, including skirting, two decks, anchoring, and underground electric, gas, telephone and cable wires. The parties agree, however, that these attachments are all detachable, and that the mobile home could be detached without being damaged or damaging the land.

The mobile home's wheels are removed and missing, but they could be replaced. The mobile home's sky light, storm

windows, window air conditioning unit, thirty gallon water heater, furnace, outdoor lamp post, landscaping, and driveway indicate suitability for habitation, but not necessarily permanence of attachment.

The mobile home has been on the land since Ms. Nowlin bought it in 1999. Six years is a significant time period. Ms. Nowlin, however, does not own the land. Instead, she pays month-to-month rent. Ms. Nowlin's claim that she intended to buy a parcel of land and move the mobile home to it, although relevant, seems self-serving in the face of her admitted lack of efforts and financial inability to do so.

One important indicator of the parties' intent at the time of attachment is the contract for the mobile home. The contract requires the mobile home to remain on the land to which it was delivered unless agreed otherwise in writing. The contract also states that the mobile home was personalty, and that Ms. Nowlin was required to notify Armstrong if at any time she sought to affix it to the land and convert it to realty. Although these provisions seem at to weigh in opposite directions, the first provision has more to do with location than attachment. The second provision indicates that the mobile home was and would remain personalty until Ms. Nowlin obtained consent to convert it to realty. Also, because these provisions were written into the contract to protect Tammac, they should be

construed against Tammac. On balance, then, the contract weighs in favor of Ms. Nowlin.

Finally, the mobile home is taxed as realty, which lends some support to Tammac. However, the Court agrees with the Moyer court that this factor is not determinative.

Although some factors favor Tammac, on balance, they support Ms. Nowlin. Because Ms. Nowlin never permanently attached the mobile home to anything, never owned or even paid yearly rent on the land, and never obtained written consent to convert the land to realty as required by the contract, the Court finds that the mobile home remained personalty.

B. Valuation of the Mobile Home

The Court finds that the bankruptcy's court's valuation of the mobile home at \$38,000.00 was not clearly erroneous, and that Tammac's claim should be crammed down to that value. A bankruptcy court's valuation is a finding of fact which should be reviewed under a clearly erroneous standard by the Court. Carter v. Kubler, 320 U.S. 243, 248 (1943). A district court must not merely "summarily affirm and adopt" the bankruptcy court's finding. Id.

Because the Court has found that the mobile home is personalty and that the anti-modification clause does not apply, Tammac's claim can be bifurcated into a secured claim up to the

value of the mobile home and an unsecured claim to the extent it exceeds the value of the mobile home. § 506(a); McDonald, 205 F.3d at 609. Thus, Tammac's secured claim of \$41,368.28 can be crammed down to the value of the mobile home.

Ms. Nowlin has given various valuation figures for the mobile home. At trial, she testified that the mobile home had a fair market value of \$25,000.00. She now concedes that this valuation was based upon an incorrect square footage figure. Applying Ms. Nowlin's expert's \$25 per square foot valuation formula to the correct square footage figure, Ms. Nowlin stated in her brief to the bankruptcy court that the mobile home had a fair market value of \$31,920.00. In her brief in this appeal, Ms. Nowlin argues that the value of the mobile home is \$26,000.00. However, at oral argument, counsel for Ms. Nowlin clarified that she believes that the mobile home's value, based upon the correct square footage, is \$31,000.00.

The bankruptcy court found that Ms. Nowlin's valuation of the mobile home at \$31,920.00 was too low. The bankruptcy court noted that although Ms. Nowlin's expert credibly testified that mobile homes tend to depreciate in value, he failed to support his valuation figure with any evidence of comparable mobile home sale prices.

The bankruptcy court found that Tammac's valuations of either \$46,751.00 using one approach or \$49,500.00 using another

were inflated. The court noted that the mobile home was purchased in October of 1999 for \$46,100.00. The court found that Tammac's expert's valuations were inflated because as Ms. Nowlin's expert testified, mobile homes, particularly when unattached to land, tend to depreciate, rather than appreciate, in value. The court also noted that according to Ms. Nowlin's testimony, the mobile home was not in excellent condition, as Tammac's expert had indicated. Finally, the court noted that the mobile homes that the expert used in his comparable sales analysis were all larger than Ms. Nowlin's.

The bankruptcy court valued the mobile home at \$38,000.00, which approximately splits the difference between the opposing side's valuations. Its cited reasons for finding undervaluation in Ms. Nowlin's estimate and overvaluation in Tammac's estimate are reasonable and based upon the evidence presented. The bankruptcy court had the opportunity to evaluate the credibility of the witnesses at trial. The valuation of \$38,000.00 was not clearly erroneous, and the Court will affirm that decision.

C. The Interest Rate

The Court agrees with the bankruptcy court that 8% is an appropriate interest rate to be applied to Tammac's crammed down claim. Ms. Nowlin argues that the rate should be limited to

prime rate at the time of trial, and Tammac argues that a significant upward adjustment from prime rate is appropriate. The parties agree that the rate formula is a legal issue which should be reviewed de novo.

In Till v. SCS Credit Corp., 541 U.S. 465, 478-80 (2004), the United States Supreme Court held that the appropriate interest rate for crammed down claims is the rate calculated under the "formula approach." This approach looks to the national prime rate and then adjusts accordingly based upon risk factors such as "the circumstances of the estate, the nature of the security, and the duration and feasibility of the reorganization plan." Id. The bankruptcy court relied upon Till in deciding on an 8% interest rate.

The prime rate at the time of trial was 4.5%. The current prime rate is 6%. The original Nowlin-Armstrong agreement specified a 12.5% interest rate based upon a thirty year payment plan. Ms. Nowlin argued in her adversary complaint that because she would now be paying off her debt within five years, the interest rate should be reduced to 8%. The bankruptcy court found that 8% was reasonable.

Ms. Nowlin now argues that the interest rate should be reduced to 4.5%. She argues only that Tammac presented no evidence at trial to support an upward adjustment. Tammac argues in its brief that an upward adjustment is appropriate because Ms.

Nowlin is a high credit risk. It notes that she has made no payments since she filed for bankruptcy.

The bankruptcy court was in a better position to assess the risk factors than the Court, and found 8% to accurately take them into account. This figure is significantly less than the 12.5% that Ms. Nowlin agreed to in her contract with Armstrong.

Moreover, given that Ms. Nowlin suggested 8% in the first place, and given that today, the prime rate is well above 4.5%, it seems particularly inappropriate to reduce the applicable rate to 4.5%. The Court will affirm the bankruptcy court's conclusion that an 8% interest rate is appropriate.

An appropriate Order follows.

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CHRISTIE A. NOWLIN,	:	CIVIL ACTION
Plaintiff/Appellant/	:	
Cross Appellee	:	
	:	
v.	:	
	:	
TAMMAC CORPORATION, et al.,	:	
Defendants/Appellees/	:	
Cross-Appellants	:	NO. 05-1528

ORDER

AND NOW, this 17th day of October, 2005, upon consideration of the appeals by Christie A. Nowlin and Tammac Corporation, et al., of the Bankruptcy Court's Order of February 25, 2005 (Docket #s 1 and 11), the briefs of the parties, and following oral argument, IT IS HEREBY ORDERED that the Bankruptcy Court's Order is AFFIRMED in all respects.

BY THE COURT:

/s/ Mary A. McLaughlin
MARY A. McLAUGHLIN, J.